

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PHILLIP HAWLEY,

Plaintiff,

v.

SNOQUALMIE, CITY OF, et al.,

Defendants.

CASE NO. C14-1716 MJP

ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

THIS MATTER comes before the Court on Defendants' Motion for Summary Judgment. (Dkt. No. 39.) Having considered the Parties' briefing and all related papers, the Court GRANTS the motion.

Background

Plaintiff Phillip K. Hawley brings suit against the City of Snoqualmie and two officers of the Snoqualmie Police Department ("SPD"), Officer Kim Stonebraker and Sergeant CK Todd, asserting a variety of claims arising out of his arrest for violation of an unserved domestic violence no-contact order. (Dkt. No. 45.)

1 Plaintiff asserts that he was not specifically informed about a prohibition on contacting
 2 his wife via third parties, and that because he was not served with the actual order before being
 3 arrested, there was no probable cause to believe he knowingly violated the order by attempting to
 4 contact his wife through a third party. (Dkt. Nos. 45, 46.) Plaintiff asserts the arrest was
 5 motivated by the SPD Officers' personal ill will towards him, and that it violated his civil rights.
 6 (Id.)

7 Arguing that there was probable cause for his arrest and that Plaintiff's claims fail as a
 8 matter of law, Defendants now move for summary judgment on all of Plaintiff's claims. (Dkt.
 9 Nos. 39, 53.) Plaintiff concedes that summary judgment is appropriate on all claims against the
 10 City of Snoqualmie except for the conversion claim, but opposes summary judgment on all
 11 claims as to Officers Stonebraker and Todd. (Dkt. No. 46 at 2.)

12 Discussion

13 I. Legal Standard

14 A. Summary Judgment

15 Summary judgment is proper where "the movant shows that there is no genuine issue as
 16 to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.
 17 56(a). The moving party bears the initial burden of demonstrating the absence of a genuine issue
 18 of fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). In assessing whether a party has met
 19 its burden, the underlying evidence must be viewed in the light most favorable to the non-
 20 moving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

21 II. Claim-Filing Requirements under RCW 4.96

22 Defendants argue that Plaintiff's state law claims are barred because Plaintiff failed to
 23 comply with RCW 4.96.020's requirement that a plaintiff file a nonjudicial claim for damages
 24 with a local governmental entity sixty days before commencing an action against the entity or its

1 agents. (Dkt. No. 39 at 13.) Plaintiff argues that although he did not wait the full sixty days, he
2 substantially complied with the statute's procedural provisions and his efforts should be deemed
3 sufficient. (Dkt. No. 46 at 18-20.)

4 "Filing a claim for damages within the time allowed by law shall be a condition
5 precedent to the commencement of any action claiming damages." RCW 4.96.010. The general
6 purpose of the sixty-day waiting period imposed by RCW 4.96.020 is "to allow government
7 defendants time to investigate claims and pursue settlement before they are sued." Estate of
8 Connelly ex rel. Connelly v. Snohomish Cnty. Pub. Util. Dist. No. 1, 145 Wn. App. 941, 944-45
9 (2008) (citation omitted). The statute of limitations is tolled during the sixty-day period,
10 "essentially add[ing] 60 days to the applicable statute of limitations." Id.; RCW 4.96.020(4).
11 The procedural requirements of RCW 4.96.020 "must be liberally construed so that substantial
12 compliance will be deemed satisfactory." RCW 4.96.020(5).

13 The Court finds that Plaintiff did not substantially comply with RCW 4.96's claim-filing
14 requirements. Plaintiff waited less than one month after submitting his claim form before filing
15 suit in King County Superior Court. (Dkt. No. 46 at 19.) Plaintiff argues that this was
16 reasonable because the statute of limitations would have expired on his false imprisonment
17 claim, and that the purposes of the claim-filing requirement have been satisfied because the City
18 of Snoqualmie conducted an investigation and engaged in preliminary settlement negotiations
19 regarding Plaintiff's claims. (Id.) The Court disagrees. As discussed above, the statute of
20 limitations is tolled during the sixty-day period, and Plaintiff has put forward no actual evidence
21 that the City was able to engage in and complete an investigation or decided that it would not
22 settle Plaintiff's claims before it was served with Plaintiff's summons and complaint.
23 Accordingly, the Court finds that all of Plaintiff's state-law claims, including his conversion
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1 claim, are barred for failure to substantially comply with the claim-filing requirements, and
2 GRANTS Defendants' Motion for Summary Judgment as to Plaintiff's state-law claims on this
3 basis.

4 Even if Plaintiff did substantially comply with this requirement, however, summary
5 judgment is nevertheless appropriate because the Court finds that probable cause for Plaintiff's
6 arrest existed as a matter of law.

7 III. Probable Cause for Plaintiff's Arrest

8 Defendants argue that probable cause for Plaintiff's arrest existed as a matter of law
9 based on Plaintiff's admissions, and that that existence of probable cause is a complete defense
10 to Plaintiff's false arrest, false imprisonment, § 1983, infliction of emotional distress, civil
11 conspiracy, and negligence claims. (Dkt. No. 39 at 5-7.)

12 Probable cause requires knowledge of facts and circumstances, based on reasonably
13 trustworthy information, which would lead a reasonable officer to believe a crime has been
14 committed. State v. Potter, 156 Wn.2d 835, 840 (2006). At the time of the arrest, the arresting
15 officer need not have evidence to prove each element of the crime beyond a reasonable doubt;
16 rather, the officer is required only to have knowledge of facts sufficient to cause a reasonable
17 person to believe that an offense has been committed. Id.

18 Here, Officers Stonebraker and Todd arrested Plaintiff for violation of a temporary order
19 of protection under RCW 26.50.110, which provides in relevant part: "Whenever an order is
20 granted under this chapter... and the respondent or person to be restrained knows of the order, a
21 violation of any of the following provisions of the order is a gross misdemeanor...: (i) The
22 restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected
23 party, or restraint provisions prohibiting contact with a protected party." RCW 26.50.110(1)(a).

1 The statute's arrest provision provides: "A peace officer shall arrest without a warrant and take
2 into custody a person whom the peace officer has probable cause to believe has violated an order
3 issued under this chapter ... if the person restrained knows of the order." RCW 26.50.110(2).

4 The enforcement provision for orders issued ex parte provides:

5 When a peace officer investigates a report of an alleged violation of an order for
6 protection issued under this chapter the officer shall attempt to determine whether
7 the respondent knew of the existence of the protection order. If the law
8 enforcement officer determines that the respondent did not or probably did not
9 know about the protection order and the officer is provided a current copy of the
10 order, the officer shall serve the order on the respondent if the respondent is
11 present. If the respondent is not present, the officer shall make reasonable efforts
12 to serve a copy of the order on the respondent. If the officer serves the respondent
13 with the petitioner's copy of the order, the officer shall give petitioner a receipt
14 indicating that petitioner's copy has been served on the respondent. After the
15 officer has served the order on the respondent, the officer shall enforce
16 prospective compliance with the order.

17 RCW 26.50.115(2).

18 Because Plaintiff was not served with the order before his arrest, the dispute here
19 surrounds the requirement that the person restrained "know[] of the order." (Dkt. Nos. 39 at 5-7,
20 46 at 6-11.) On Saturday, September 8, 2012, SPD Officer Weiss informed Plaintiff over the
21 telephone that a domestic violence order of protection had been issued against him, and that
22 contacting his wife—whether in person, by phone, or by e-mail—would violate the order and
23 could carry criminal penalties. (Dkt. Nos. 41, 48.) Officer Weiss did not read the no-contact
24 order to Plaintiff or explicitly inform Plaintiff that contact through third parties was also
prohibited. (Id.)

Plaintiff then sent a Facebook message to a friend, asking that she share certain
information with his wife. (Dkt. No. 40-3.) In that message, Plaintiff informs the mutual friend
that he can no longer contact his wife under the terms of the no-contact order, and that he does

1 not intend to contact her, but requests that the friend relay a message to his wife regarding the
2 dissolution of their marriage. (Id.)

3 Later that day, Plaintiff went to the SPD station to pick up clothing and medications that
4 his wife had left there, as had been arranged with Officer Weiss over the telephone. (Dkt. Nos.
5 41-1, 48.) Officers Stonebraker and Todd arrested Plaintiff when he arrived at the station,
6 concluding that his Facebook message had violated the third-party-contact provision of the
7 protective order. (Dkt. No. 48.)

8 Defendants argue that Plaintiff's admissions establish probable cause as a matter of law
9 because Plaintiff admits that he (1) knew an order of protection had been issued, (2) knew the
10 order prohibited him from contacting his wife, and (3) attempted to contact his wife by asking a
11 mutual friend to relay a message. (Dkt. No. 39 at 5-6.) Plaintiff argues that where ex parte
12 orders are at issue, the person restrained must have knowledge of the order and what it proscribes
13 before that person can be guilty of knowingly violating the order. (Dkt. No. 46 at 7-11.)
14 Because Plaintiff had no way to know that third-party contact was proscribed before sending the
15 Facebook message, Plaintiff argues, he could not have violated a provision of the order he "knew
16 of." (Id.) Plaintiff argues that this absence of probable cause was immediately identified by the
17 Issaquah Municipal Court, which found that there was no probable cause to arrest or hold
18 Plaintiff and ordered him released on his own recognizance. (Id.)

19 While the Domestic Violence Prevention Act requires service of protection orders on
20 those restrained, service of the order is not a prerequisite for criminal prosecution of the person
21 restrained because such a requirement would incentivize people to avoid personal service in
22 order to violate the order with impunity. City of Auburn v. Solis-Marcial, 119 Wn. App. 398,
23 401-04 (2003). Rather, the protection order is enforceable "so long as the person restrained
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1 knows of the order.” Id. at 401. Stated differently, the prosecution “must show that [the person
2 restrained] knowingly violated the order.” Id. at 403.

3 The Court finds that, as a matter of law, there was probable cause to believe Plaintiff
4 knowingly violated the no-contact order. Plaintiff was informed that he could not lawfully
5 contact his wife, including contact via electronic messaging, and he attempted to contact her
6 anyway. While he was not aware of the third-party contact restriction, specifically, it is
7 reasonable to assume that an order prohibiting in-person, phone, and e-mail contact also
8 prohibits e-mail contact routed through a mutual friend. Considering the relatively low standard
9 imposed by the probable cause requirement, a reasonable officer in this situation could conclude
10 that Plaintiff knew he was engaging in prohibited conduct when he attempted to send a message
11 to his wife using a mutual friend. Furthermore, Plaintiff’s argument that the Issaquah Municipal
12 Court “found no probable cause” is misguided: the municipal court found that there was no
13 probable cause to hold Plaintiff, not that there was no probable cause to arrest Plaintiff. (Dkt No.
14 48 at 6-7.)

15 The existence of probable cause for Plaintiff’s arrest forecloses his false arrest, false
16 imprisonment, § 1983, infliction of emotional distress, civil conspiracy, and negligence claims,
17 and the Court concludes that Defendants are entitled to summary judgment on those claims on
18 this basis. Even if there were a genuine issue of material fact as to the existence of probable
19 cause, however, Defendants are still entitled to summary judgment because the Officers have
20 qualified immunity from Plaintiff’s federal claims and state-law immunity from Plaintiff’s state-
21 law claims.

1 IV. Qualified Immunity under § 1983

2 Defendants argue that—assuming there was not probable cause for the arrest as a matter
3 of law—Officer Stonebraker and Officer Todd’s mistake in finding probable cause was
4 reasonable, and thus the officers are entitled to qualified immunity from Plaintiff’s § 1983
5 claims. (Dkt. No. 39 at 7-15.) Plaintiff argues that his arrest without probable cause violated his
6 rights under the Fourth Amendment and that the conduct of Officers Stonebraker and Todd was
7 not objectively reasonable. (Dkt. No. 46 at 11-14.) Plaintiff concedes that summary judgment is
8 appropriate on his § 1983 claims against the City of Snoqualmie. (*Id.* at 2.)

9 Qualified immunity shields a federal or state official from suit “when she makes a
10 decision that, even if constitutionally deficient, reasonably misapprehends the law governing the
11 circumstances she confronted.” *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004). Officials are
12 shielded from money damages unless a plaintiff pleads facts showing (1) that the official violated
13 a statutory or constitutional right, and (2) that the right was “clearly established” at the time of
14 the challenged conduct. *Ashcroft v. al-Kidd*, 131 S. Ct. 2074, 2080 (2011). Qualified immunity
15 protects “all but the plainly incompetent or those who knowingly violate the law.” *Id.* at 2085.

16 The Court finds that Defendants are entitled to summary judgment on Plaintiff’s § 1983
17 claims on the basis of qualified immunity. Washington’s statutes and case law make clear that
18 service of a domestic violence no-contact order is not required for a warrantless arrest of the
19 person restrained. *Solis-Marcial*, 119 Wn. App. at 401-04; RCW 26.50. Rather, Washington
20 law requires only that the person “know of” the order. *Id.* The Officers’ conclusion that Plaintiff
21 knowingly violated the order as required by the statute’s arrest provision, if based on a
22 misapprehension of the law, was reasonable under the circumstances.

1 Because Plaintiff concedes that he has no Monell claim against the City of Snoqualmie,
2 the Court GRANTS summary judgment on Plaintiff's federal claims under the doctrine of
3 qualified immunity.

4 V. State Law Domestic Violence Immunity

5 Defendants argue that Officers Stonebraker and Todd are immune from Plaintiff's state
6 law claims under RCW 26.50.140, Washington's immunity provision for the enforcement of
7 domestic violence orders. (Dkt. No. 39 at 8-9.) Plaintiff argues a genuine issue of material fact
8 precludes summary judgment on this basis because there is sufficient evidence for a reasonable
9 fact finder to conclude that the arresting officers acted in bad faith and with malice. (Dkt. No. 46
10 at 14-16.)

11 RCW 26.50.140 provides that "[n]o peace officer may be held criminally or civilly liable
12 for making an arrest under RCW 26.50.110 if the police officer acts in good faith and without
13 malice." Malice may be shown by demonstrating that the actions complained of were
14 "undertaken from improper or wrongful motives or in reckless disregard of the rights of the
15 plaintiff." Bender v. City of Seattle, 99 Wn.2d 582, 594 (1983) (quoting Peasley v. Puget Sound
16 Tug & Barge Co., 13 Wn.2d 485, 502 (1942)). Improper motive may be established by
17 proof that the defendant instituted the criminal proceedings against the plaintiff: (1) without
18 believing him to be guilty, or (2) primarily because of hostility or ill will toward him, or (3) for
19 the purpose of obtaining a private advantage as against him. Id.

20 Summary judgment as to Plaintiff's state-law claims in favor of Officers Stonebraker
21 and Todd is GRANTED because there is insufficient evidence to create a genuine issue of
22 material fact regarding malice or bad faith. The evidence put forward by Plaintiff regarding false
23 allegations of bruising and the donation of his clothing is insufficient to support a finding that the
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1 Officers arrested Plaintiff despite not believing him to be guilty, arrested Plaintiff primarily out
2 of ill will towards him, or arrested Plaintiff in an attempt to obtain a private advantage against
3 him.

4 **Conclusion**

5 The Court finds that Defendants are entitled to summary judgment because (1) Plaintiff
6 failed to substantially comply with the pre-suit claim-filing requirements, (2) probable cause for
7 Plaintiff's arrest existed as a matter of law, and (3) the Officers are immune from Plaintiff's state
8 and federal claims under the doctrine of qualified immunity and Washington's statutory
9 immunity for the enforcement of domestic violence orders. Accordingly, Defendants' Motion
10 for Summary Judgment as to all of Plaintiff's claims is GRANTED.

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12 The clerk is ordered to provide copies of this order to all counsel.

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14 Dated this 9th day of October, 2015.

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17 Marsha J. Pechman
18 Chief United States District Judge
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